



Joint Centennial Project of the Rotary Clubs of Thiensville and Mequon

CONSERVATION EASEMENT EXECUTIVE SUMMARY

In early 2003, driven by an initiative from Rotary International that each of its local Rotary Clubs develop a project to commemorate Rotary International's Centennial year (2005), the two Rotary Clubs in the Mequon and Thiensville communities agreed to work jointly to select and pursue a centennial project supported by both clubs. Rotary identified the Riverwalk as their Centennial Project, presented their proposal to the Mequon-Thiensville Town Center Committee, and received the support of the City of Mequon and Village of Thiensville.

The Rotary Riverwalk project was born from a community need articulated at public meetings convened by the Village of Thiensville and the City of Mequon to create a vision for a Town Center. The Town Center design encompasses parts of both communities and seeks to improve the quality of life and aesthetics while strengthening the local tax base. The complete Town Center Plan can be viewed from a link at www.ci.mequon.wi.us and the Rotary Riverwalk plan can be found at www.mtrotaryriverwalk.org.

The two Rotary Clubs in Mequon and Thiensville were already known for accomplishing great feats - having spearheaded and gifted Rotary Park to the City of Mequon in 1989, a million dollar project. This magnificent park is home to Gathering on the Green, provides accessible trails, and contains many other features that make it a significant asset to the community. The two Rotary Clubs stepped forward to adopt the Town Center Riverwalk as their Joint Centennial Project. The size, scope, impact and visibility of the project appealed to our Rotary club members, just as the development of the Rotary Park had in Mequon a number of years earlier.

The Town Center Riverwalk differs from Rotary Park in that most of the land on which the Riverwalk will be developed is, and will remain, privately owned. Therefore, one of Rotary's first challenges is to secure uncompensated permission from dozens of landowners along the route. Individual landowner consent to construct and maintain the Riverwalk is secured through a "Conservation Easement" granted to the municipality. Wisconsin Statutes provide conservation easements for the purpose of assuring the availability of real property for recreational and open spaced uses. The statutes also protect both the municipality and landowner from liability.

More specifically, the Riverwalk Conservation Easement is a three page document that must be signed, notarized and recorded with the Register of Deeds. The easement defines a conservancy area that is a 10 to 20 foot wide strip of land along the river's edge. The easement further details the municipality's rights and obligations to construct, build, operate, repair and maintain a public access riverwalk as well as the municipality's obligation to protect the landowner from injury, loss, claim or other liability. These rights and obligations run with the property and must remain in place forever. Then, in order to assure the rights granted under Conservation Easement are superior to third party claims, like a mortgage, a release or subordination must be secured from all other interest holders.

Only after landowners grant their permission to proceed through a signed easement will Rotary begin engineering. Design documents will be prepared by consulting engineers for review and approval by the landowner. Once complete, Rotary will ask Landowners for final approval by authorizing Rotary to submit plans on their behalf to the municipality's Planning Commission.

CONSERVATION EASEMENT

This grant of Conservation Easement and these covenants are made by _____, an individual, (hereinafter referred to as the Grantor), the *Village of Thiensville or City of Mequon*, Ozaukee County, Wisconsin, a Wisconsin municipality, (hereinafter referred to as Grantee).

WHEREAS, the Grantor is the owner in fee of certain real property located in the County of Ozaukee in the State of Wisconsin described more particularly as described in Exhibit "A" (legal description); and

WHEREAS, Wisconsin Statutes, Section 700.40, authorizes the granting of a Conservation Easement for the purpose of assuring the availability of real property for recreational and open spaced uses; and

WHEREAS, the Grantor desires and intends that the natural elements, aesthetic and recreational values of the conservancy area be maintained and improved in accordance with the terms and conditions of this Easement and these covenants; and

WHEREAS, the Grantor and Grantee both desire, intend and have the common purpose of conserving and preserving in perpetuity the conservancy area in a relatively natural condition by placing restrictions on the use of the conservancy area and be transferring from the Grantor to the Grantee, by the creation of a conservation easement on, over and across the conservancy area, affirmative rights to ensure the preservation of the recreational and open space values of the conservancy area; and

WHEREAS, the Grantor and Grantee acknowledge that Grantee is responsible for any third party claims for damages resulting from the improvements and maintenance of the easement.

WHEREAS, the Grantor has received valuable consideration for the granting of this Easement and the making of these covenants.

NOW, THEREFORE, the Grantor for One Dollar (\$1.00) and other good and valuable consideration received does hereby give, grant, bargain and convey to the Grantee, its successors and assigns forever, a Conservation Easement in perpetuity over the conservancy area consisting of the following:

1. The right of the Grantee to enforce by proceedings at law or in equity the covenants hereinafter set forth. The right shall include, but not be limited to, the right to bring an action in any court of competent jurisdiction to enforce the terms of this Easement or these covenants, to require the restoration of this property to its natural condition or to enjoin non-compliance by appropriate injunctive relief. The Grantee does not waive or forfeit the right to take action as may be necessary to ensure compliance with terms of this Easement and these covenants by any prior failure to act. Nothing herein shall be construed to entitle the Grantee to institute any enforcement action against the Grantor for any changes to the conservancy area due to causes beyond the Grantor's control and without the Grantor's fault or negligence (such as changes caused by fire, flood, storm, civil or military authorities undertaking emergency action or unauthorized wrongful acts of third parties).

2. The right to establish or re-establish vegetation through plantings and landscaping.

3. The right to manipulate vegetation, topography on the conservancy area through, excavating, burning, cutting, pesticide application and other suitable methods for the purpose of protecting the natural appeal of the area.

4. The right to construct, build, operate, repair and maintain a public access riverwalk across, through and over the conservancy area. To establish or build decks, boardwalks, bridges, fences, informational and directional signs and other suitable structures as mutually agreed by the parties to view the river, in the event such structure is permitted by federal, state or local ordinance or regulations. Work shall be done in a good and workmanlike manner and will not interfere with the use of the surface of the ground on Grantor's adjoining land except such inconveniences as may be occasioned by the actual construction, building, operation, repairing and maintenance of the improvements. Grantee agrees to restore Grantor's land, as nearly as possible, to the condition existing prior to the day of entry by Grantee.

5. The right to install benches, bicycle racks, trash receptacles and other necessary conveniences to maximize public use of the conservancy area.

And in furtherance of the foregoing affirmative rights, the Grantor makes the following covenants on behalf of themselves and their heirs, successors and assigns, which covenants shall run and bind the conservancy area in perpetuity.

COVENANTS

1. Uses. There shall be no commercial or industrial activity undertaken or allowed, and use of easement shall be consistent with the rights granted under Wisconsin Statute, Section 700.40.

2. Buildings and Structures. There shall be no private buildings, dwellings, barns, roads, advertising signs (other than those signs necessary to name, mark or direct the public to the conservancy) or other structures; except as provided in Paragraph Four above.

3. Land Disturbance. There shall be no dredging, tilling, excavating, mining, logging, drilling or removal of any topsoil, sand, gravel, rock, minerals, or other materials within the conservancy area except in conjunction with authorized management or landscaping activities.

4. General Maintenance. Grantee agrees to maintain all improvements, specifically, regular maintenance and repairs of bridges, benches, platforms, hand rails, fences, trash receptacles, light fixtures, planters, signs, trail surfaces, retaining walls other man made improvements. Grantee further agrees to perform annual maintenance of landscaped areas including; mulching of landscape beds, care for trees, shrubs, plantings and any other planted material.

5. Dumping/Disposal. There shall be no dumping of trash, plant materials or compost, ashes, garbage or other unsightly or offensive material, especially including any hazardous or toxic waste.

6. Agricultural Uses. All Agricultural uses are prohibited (e.g., plowing, tilling, haying, cultivating, planting or other agricultural activities).

7. Motorized Vehicle Use. There shall be no operation of any motorized vehicle or equipment within the conservancy area except in conjunction with the authorized maintenance activities. Parking of automobiles, trucks or motor homes is strictly prohibited within the conservancy area.

8. Indemnification. Grantee agrees to indemnify Grantor for any injury, loss, claim or other liability for injury, loss or damage that may occur if said injury, loss or damage is not the result of Grantors negligence or intentional act.

GENERAL PROVISIONS

1. This Conservation Easement and these covenants shall run with and burden the conservancy area in perpetuity and shall bind the Grantor and its heirs, successors and assigns. This Easement and these covenants are fully valid and enforceable by any assignee of the Grantee, whether assigned in whole or in part.

2. The Grantor, the Grantor's successors and the Grantor's assigns agree to pay any and all real property taxes and assessments levied by competent authority on the conservancy area.

3. The Grantor agrees that the terms, conditions, covenants and restrictions set forth in this instrument will be inserted in any subsequent conveyance of any interest in said property. The Grantor agrees to notify the Grantee of any such conveyance in writing and by certified mail within 30 days before the conveyance.

4. The Grantee may assign or transfer this Conservation Easement and the rights and covenants contained herein to any federal or state agency or private conservation organization for management and enforcement provided the transferee is a Holder as defined in Wisconsin Statute 700.40.

5. The terms Grantor and Grantee as used herein shall be deemed to include, respectively, the Grantor and its heirs, successors, personal representatives, executors and assigns, and the Grantee and its successors and assigns.

6. The Grantor hereby warrants and represents that the Grantor is seized of the conservancy area in fee simple and have good right to grant and convey this Conservation Easement and make those covenants, that the conservancy area is free of all encumbrances.

7. This document shall be recorded in the office of the Register of Deeds for Ozaukee County, after it is signed and properly notarized.

8. It is the intent that the entire conservancy area remain one parcel and that is not be divided in the future.

9. Should the Grantor, the Grantor's successors or the Grantor's assigns be in violation of any of the terms and conditions of this Conservation Easement, the Grantee shall notify the Grantor, the Grantor's successors or the Grantor's assigns, whichever is applicable. Should the violation not be corrected within said thirty (30) days, the Grantee shall have the right to correct the violation and be reimbursed by the Grantor, the Grantor's successors or the Grantor's assigns, whichever may apply, for the costs of such correction, including, but not limited to, the reimbursement of costs of litigation and attorney's fees.

Dated this _____ day of _____, 2006.

Property Owner Name _____

STATE OF WISCONSIN)
) SS
OZAUKEE COUNTY)

Personally appeared before me this _____ day of _____, 2006, the above-named _____ to me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin
My Commission is permanent/expires:

Dates this _____ day of _____, 2006.

VILLAGE OF THIENSVILLE or,
CITY OF MEQUON

By:_____

STATE OF WISCONSIN)
) SS
OZAUKEE COUNTY)

Personally appeared before me this _____ day of _____, 2006, the above-named Diane Robertson, Village Administrator for Village of Thiensville, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin
My Commission is permanent/expires:

INSTRUMENT DRAFTED BY:
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